

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In re Applications of)	GC Docket No. 95-172
)	
RAINBOW BROADCASTING COMPANY)	File Nos. BMPCT-910625KP
)	BMPCT-910125KE
For Extension of Time)	BTCCT-911129KT
to Construct)	
)	
and)	
)	
For Assignment of)	
Construction Permit for)	
Station WRBW(TV))	
Orlando, Florida)	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Honorable Joseph Chachkin
Administrative Law Judge

RAINBOW BROADCASTING, LIMITED
PETITION FOR RECONSIDERATION OF ORAL RULING

Rainbow Broadcasting, Limited (RBL), permittee of Station WRBW-TV, Channel 65, Orlando, Florida, hereby petitions the Administrative Law Judge to reconsider his instruction at the January 30, 1996 prehearing conference in this proceeding that RBL disclose the names and addresses of its limited partners to Press Broadcasting Company. RBL's limited partners are irrelevant to the issues designated in this proceeding and given Press' past behavior, RBL has substantial reason to believe that disclosure would subject RBL's business interests to significant injury. As set forth in the attached Statement of Joseph Rey, WRBW's General Manager, Press has engaged in a continuing effort to disrupt and impede RBL's operation of WRBW and disclosure of the names and addresses of the RBL limited partners would provide additional opportunity for competitive mischief.

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RBL believes that once the ALJ is fully cognizant of the circumstances militating against disclosure, he will reconsider his instruction and determine that disclosure of RBL's limited partners should not be required in advance of a persuasive showing of relevance.

The RBL limited partners are not relevant to the issues designated by the Commission. Each of the issues designated by the Commission relates to applications filed by Rainbow Broadcasting Company, the general partnership that was the original Channel 65 permittee: The events relevant to the *ex parte* issue (Issue 1), the financial misrepresentation issue (Issue 2), the tower litigation issue (Issue 3) and the extension issue (Issue 4) did not relate to or involve any RBL limited partner. RBL did not assume the construction permit until after issuance of the Mass Media Bureau's grant of the above captioned applications for extension and 316 pro forma assignment on July 1, 1993^{1/} and the occurrence of the events which form the basis for the designated issues.

None of RBL's limited partners was part of or involved with Rainbow Broadcasting Company in any capacity, including principal, lender or guarantor. None of the RBL limited partners was involved with the extension applications or the

1/ The assignment of the construction permit to RBL was effected on October 1, 1993, subsequent to the events encompassed by the designated issues. By *Memorandum Opinion and Order*, 9 F.C.C. Rcd. 2839 (1994), the Commission upheld the Mass Media Bureau's grant of Rainbow Broadcasting Company's pending applications.

representations made by Rainbow Broadcasting Company to the F.C.C. Moreover, none of RBL's limited partners had any role in the litigation concerning the Bithlo tower, which forms the basis for Issue 3. In short, the RBL limited partners are irrelevant to the issues in this proceeding; their only interest is the continued authorization of RBL to operate Station WRBW.

The requested disclosure is inappropriate under the Commission's discovery rules, whereas nondisclosure does not in any way inhibit Press' discovery rights. The discovery rules (Section 1.311) contemplate limitation of discovery to those with relevant evidence. The established process protects against the use of discovery as a fishing expedition for information irrelevant to the designated issues through the device of a protective order. Sections 1.313, 1.315(c), 1.319. Here, the information pertaining to RBL's limited partners has been sought without benefit of the normal discovery process, thus both excusing Press from making the normally required demonstration of relevance and depriving RBL of the normally provided opportunity to seek a protective order.

Rectification of this situation would save RBL from potential irreparable injury without in any way compromising or limiting Press' discovery rights: While postponing identification of RBL's limited partners pending the demonstration of relevance contemplated by the discovery rules protects the permittee from unwarranted intrusion into its

business affairs, it does not inhibit Press or Commission counsel from seeking discovery through the normal process. Section 1.315(a)(1) provides that a notice of deposition need not identify potential deponents by name: "[I]f the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs" is sufficient.

RBL's limited partners are wholly insulated from the operation of the station within the contemplation of the Commission's rules. They need not be disclosed on the Commission's Ownership Reports and their interests are not cognizable under the multiple ownership rules. Rule 73.3615 states that "a limited partner need not be reported, regardless of the extent of ownership, if the limited partner is not materially involved, directly or indirectly, in the management or operation of the licensee and the licensee so certifies." RBL's governing documents insulate the limited partners and it has so certified. Similarly, Rule 73.3555 Note 2(g) excludes these kinds of limited partnership interests from ownership attribution. Unlike the comparative pretrial information exchange, nothing in the Commission's rules requires disclosure of RBL's limited partners. On the contrary the multiple ownership rules and ownership reporting requirements cited above strongly suggest a Commission policy of permitting the nondisclosure of insulated limited partners absent an affirmative showing of a need for

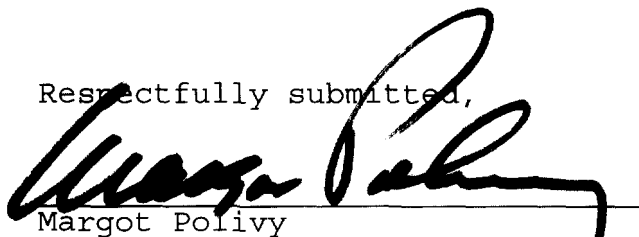
disclosure. No such showing has been made with respect to RBL.

RBL's reluctance to disclose the names and addresses of its limited partners is not an abstract exercise; it is the result of a repeated pattern of business interference by Press Broadacsting Company, a UHF competitor in the Orlando market. As explained in the attached statement of Joseph Rey, General Manager of WRBW-TV, Press has sought to undermine RBL's relationship with program suppliers, the tower owner and other business associates. Moreover, Press has instituted frivolous litigation to harass RBL and has at every opportunity sought to discredit RBL's reputation and impede its business development. RBL has every expectation that Press would extend its pattern of interference to RBL's limited partners if that information were disclosed.

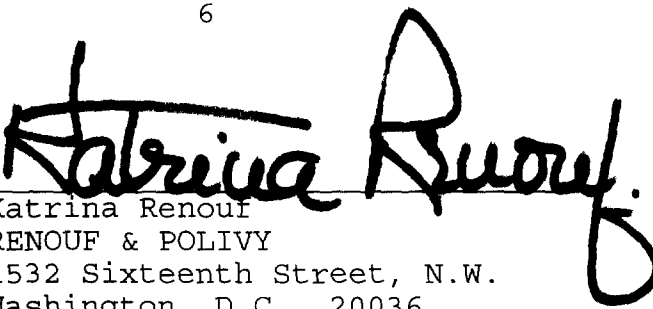
CONCLUSION

In view of the foregoing, RBL respectfully requests that the Presiding Judge reconsider his oral ruling made at the January 30, 1996 prehearing conference in this case and rule that absent an appropriate showing of relevance under the procedures set forth in the Commission's discovery rules, Section 1.311, et seq., Rainbow Broadcasting, Limited is not required to disclose the names and addresses of its limited partners.

Respectfully submitted,



Margot Polivy

A large, stylized handwritten signature in black ink, reading "Katrina Renouf". The signature is written over a horizontal line.

Katrina Renouf
RENOUF & POLIVY
1532 Sixteenth Street, N.W.
Washington, D.C. 20036
202.265.1807

Counsel for Rainbow Broadcasting, Limited

6 February 1996

STATEMENT OF JOSEPH REY

My name is Joseph Rey. I am the General Manager of Station WRBW and a principal of Rainbow Broadcasting Company, Inc., the general partner of Rainbow Broadcasting, Limited.

I have read the attached pleading entitled "Rainbow Broadcasting, Limited Petition for Reconsideration of Oral Ruling" and state that the representations contained therein, including those relating to the limited partners of RBL, are true and correct to the best of my knowledge and belief.

I further state that Press Broadcasting Company, Inc. has interfered with the operation of Station WRBW on numerous occasions and in numerous ways, including but not limited to the following:

1. In 1987, with full knowledge that Rainbow Broadcasting Company had an exclusive right to an antenna space at 1500 feet on the Bithlo Tower, Press induced the landlord of the tower to give Press reasonable assurance, for FCC filing purposes, of space for the Channel 18 antenna in the same aperture in order to successfully complete Press' frequency swap between Channel 68 and Channel 18. The ensuing litigation continued for four years. In 1991, upon learning that Rainbow Broadcasting Company

had reached a settlement of its dispute with the Bithlo Tower Company under which, *inter alia*, Rainbow received substantial monetary and other compensation. Press attempted to persuade Bithlo Tower Company not to sign the settlement agreement.

2. On or about January 19, 1994, Press harassed Rainbow Broadcasting Company by filing a damage suit in Orange County, Florida against the company and its principals, alleging that the Rainbow Broadcasting Company Bithlo Tower litigation was frivolous. The Court dismissed the Press complaint as baseless.

3. On or about January 19, 1994, Press interfered with Rainbow Broadcasting, Limited's negotiations to lease studio space at Universal Studios, resulting in months of delay, added expense and higher construction costs.

4. In late January 1994, Press, after adequate notice from the Bithlo Tower landlord, refused to reduce power of its station, WKCF, located on the same tower as WRBW, to permit installation of the WRBW tower, hence endangering the lives of the installers in an attempt to prevent the installation from taking place. The installation was only made possible by the landlord's

physical intervention and temporary reduction of WKCF's transmitting power.

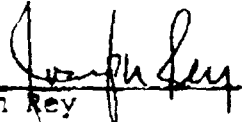
5. In September 1995, after WRBW had emerged as the winning bidder against Press for the syndication rights to "Star Trek: Deep Space Nine," Press attempted to obtain the rights by interfering with the contractual relations between Paramount and WRBW by seeking to persuade Paramount that Rainbow was in danger of imminent loss of license because of Press' legal action against the FCC. Press alleged that because WRBW was about to lose its license, WRBW was not capable of fulfilling its commitments under the program agreement. As a result, WRBW-TV was forced to renegotiate a substantially larger down payment and accelerate payment terms in order to preserve its rights to the program.

In light of this history, it is my absolute conviction that Press would use any information concerning the identity of Rainbow Broadcasting, Limited's limited partners to undermine their relationship with Rainbow. Any such interference would have a serious adverse impact upon WRBW's operation and development. In this case, where Rainbow's limited partners are passive investors who had no relationship with Rainbow Broadcasting Company, the predecessor permittee of Channel 65, or the

events related to the issues designated for hearing, disclosure of the names and addresses of Rainbow's limited partners would be gratuitous and potentially extremely injurious to Rainbow Broadcasting. Limited's business relationships.

This statement is true and correct to the best of my knowledge and belief and is made under penalty of perjury.

February 6, 1996



Joseph Rey

TOTAL P.25

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Rainbow Broadcasting, Limited Petition for Reconsideration of Oral Ruling were sent first class mail, postage prepaid, this sixth day of February 1996, to the following:

David Silberman, Esquire
Stewart A. Block, Esquire
Office of the General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 602
Washington, D.C. 20554

Harry F. Cole, Esquire
Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 250
Washington, D.C. 20036
Counsel for Press Broadcasting Company, Inc.

Charles Dziedzic, Esquire
Federal Communications Commission
1919 M Street, N.W., Room 720
Washington, D.C. 20554

Bruce A. Eisen, Esquire
Kaye, Scholer, Fierman, Hayes & Handler, LLP
901 Fifteenth Street, N.W., Suite 1100
Washington, D.C. 20005
Counsel for Rainbow Broadcasting Company


Katrina Renouf